

CHANGING THE WORLD, ONE CASE AT A TIME:

I. THE RIGHTS WE ARE HERE TO PROTECT: the right to counsel, due process and fundamental fairness

a. United States Constitutional Guarantees:

- i. SIXTH AMENDMENT: “In all criminal prosecutions, the accused shall enjoy the right to...”
 1. “[B]e informed of the nature and cause of the accusation”
 2. “[B]e confronted with the witnesses against him;”
 3. “[H]ave compulsory process for obtaining witnesses in his favor,”
 4. **“and to have the Assistance of Counsel for his defence.”**
 - a. Right to counsel applies to the states via the 14th Amendment. Gideon v. Wainwright
 - b. Right to counsel applies in misdemeanor and petty offenses for which the accused receives a term of imprisonment (actual or suspended). Argersinger v. Hamlin, 407 US 25 (1972); Alabama v. Shelton, 535 US 654 (2002)
 - c. Applies to probation violations to a limited degree: Gagnon v. Scarpelli, 411 US 790 (1973)—the right to counsel when the issues at the hearing are “complex or otherwise difficult to develop.” (Contra—Baldwin v. State, 891 So.2d 274 (Miss. Ct. App. 2004), the right to appointed counsel in PVHs is determined on a case-by-case basis)
- ii. Right to Counsel is the Right to Effective Assistance of Counsel
 1. Strickland v. Washington, 466 US 668 (1984)
 - a. “[A] fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ‘ample opportunity to meet the case of the prosecution’ to which they are entitled.” Citing to Powell v. Alabama, 287 US 68
 - b. “That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results. **An accused is entitled to be assisted by an attorney,**

whether retained or appointed, who plays the role necessary to ensure that the trial is fair.”

- c. The Government may not systemically deny an accused the assistance of counsel by various rules and procedures.
- d. Counsel may not systemically deny an accused the right to assistance of counsel by his/her actions or inactions

2. Right to Counsel at the Commencement of Adversarial Proceedings:

- a. **Rothgery v. Gillespie County, 514 US 191 (2008)**: Right to counsel commences at “the initiation of adversary judicial criminal proceedings—whether by formal charge, preliminary hearing, indictment, information or arraignment. The rule is not ‘mere formalism’ but a recognition of the point at which the ‘government has committed itself to prosecute,’ . . . the accused ‘finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law.’” (citations omitted)

iii. Right to Favorable Evidence:

- 1. **Brady v. Maryland, 373 US 83 (1963)**: The due process clause entitles an accused to information which tends to mitigate guilt or punishment: “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, **irrespective of the good faith or bad faith of the prosecution.**”
- 2. **Kyles v. Whitely, 514 U.S. 419 (1995)**
The right to exculpatory evidence includes access to information that **challenges the integrity of and thoroughness of a police investigation**. (The accused was entitled to evidence which provided “opportunities to attack not only the probative value of crucial physical evidence and the circumstances in which it was found, but the thoroughness and even the good faith of the investigation.”)

iv. Right to Due Process:

1. **FIFTH/FOURTEENTH AMENDMENTS:**

- a. **Fifth Amendment**: “No person shall be . . . deprived of life, liberty, or property, without due process of law”
- b. **Fourteenth Amendment** “No state shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without **due process** of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. **Due Process Defined:** addresses the administration of justice
 - a. "[A]s applied to a criminal trial, denial of due process is the failure to observe **that fundamental fairness essential to the very concept of justice.**" Lisenba v. California, 314 US 219 (1941)
 - b. "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has" Griffin v. Illinois, 351 US 12 (1956)
 - c. "[W]hen a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant **has a fair opportunity to present his defense.** This elementary principle, grounded in significant part on the Fourteenth Amendment's due process guarantee of fundamental fairness, **derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake.**" Ake v. Oklahoma, 470 US 68 (1986)
 - d. "We recognized long ago that mere access to the courthouse doors does not, by itself, assure a proper functioning of the adversary process, and that **a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense.**" Id.
 - e. "[F]undamental fairness entitles indigent defendants to **'an adequate opportunity to present their claims fairly within the adversary system,'** To implement this principle, we have focused on identifying the "basic tools of an adequate defense or appeal," *Britt v. North Carolina*, 404 U. S. 226 (1971), and we have required that such tools be provided to those defendants who cannot afford to pay for them." Ake

b. MISSISSIPPI:

- i. Constitution—Bill of Rights
 1. SECTION 14: "No person shall be deprived of life, liberty, or property except by due process of law."

2. SECTION 26: “In all criminal prosecutions **the accused shall have a right to be heard by himself or counsel**, or both, **to demand the nature and cause of the accusation, to be confronted by the witnesses against him**, to have **compulsory process** for obtaining witnesses in his favor”
3. SECTION 28: “Cruel or unusual punishment shall not be inflicted, nor excessive fines be imposed.”
4. SECTION 29: “(1) Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses . . .”
5. SECTION 32: “The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people.”

ii. Miss. Code Ann. § 25-32-9 requires that:

1. “Any person . . . arrested and charged **with a felony, a misdemeanor or an act of delinquency**,” shall be afforded the opportunity to sign an affidavit of indigency and be appointed a public defender.
2. The indigent accused is furthermore statutorily entitled to have “representation available **at every critical stage of the proceedings against him where a substantial right may be affected**.”
3. “[n]o person determined to be an indigent . . . shall be imprisoned as a result of a misdemeanor conviction unless he was represented by the public defender or waived the right to counsel.”

II. **THE PEOPLE WE ARE HERE TO PROTECT: our current clients, our future clients (and ourselves)**

a. **Our Ethical Obligations:**

i. MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

1. **Preamble: A Lawyer’s Responsibilities:**

- a. “A lawyer is a representative of clients, an officer of the legal system and **a public citizen having special responsibility for the quality of justice.**” (*see also ABA Model Rules of Professional Conduct, Preamble* “ A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”)

- b. “As advisor, a lawyer provides a client with an **informed understanding** of the client's legal rights and obligations and explains their practical implications.”
 - c. “As advocate, a lawyer **zealously asserts the client's position** under the rules of the adversary system.”
 - d. “As negotiator, a lawyer **seeks a result advantageous to the client** but consistent with requirements of honest dealing with others.”
 - e. “As a public citizen, a lawyer should seek **improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.**” (*identical to ABA Model Rules of Professional Conduct Preamble, section 6*)
2. **RULE 1.1 COMPETENCE:** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
 3. **RULE 1.3 DILIGENCE:** A lawyer shall act with reasonable diligence and promptness in representing a client. Comment: “A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and may take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client.”

b. Our Clients

- i. In the attorney-client relationship the attorney is the employee and the client the employer:
 1. (See Rule 1.2: Scope of Representation: (a) a lawyer shall abide by a client’s decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued. . . . In a criminal case, a lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether to testify.
- ii. Maintain their Humanity:
 1. Do not expect of others in the system what you do not do yourself:

- a. Use their names not labels (eliminate “my client” and replace it with Mr./Mrs.)
 - b. Include them in discussions and decision-making
 - c. Be mindful of your body language (the distance we sit from our clients, our willingness or not to place a hand on their shoulder as we discuss an issue, etc.)
 - d. Be mindful of your words and behaviors outside the courtroom as much as you do inside the courtroom
- 2. Do not allow the system to process them, by not processing their cases:
 - a. Move to change deadlines for discovery, Brady and plea offers if you are not getting needed information in a timely fashion to allow your client to review and consider it—
 - i. MS RULE OF PROFESSIONAL RESPONSIBILITY 1.4 COMMUNICATION: “(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”
 - ii. MS RULE OF PROFESSIONAL RESPONSIBILITY 1.4 COMMENT: “The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.”
 - iii. MS RULE OF PROFESSIONAL RESPONSIBILITY 1.2: “In a criminal case, a lawyer shall abide by the client’s decision, **after consultation with the lawyer**, as to a plea to be entered, whether to waive jury trial and whether the client will testify.”
 - b. Obligations to assure adequate time to consult with counsel, receive advice and make meaningful decisions applies as much to plea bargains as it does to trial
 - i. Approximately 94% of all state convictions are the result of guilty pleas. “Plea bargains have become so central to the administration of the criminal justice system that defense counsel have

responsibilities in the plea bargain process . . . that must be met to render the adequate assistance of counsel that the Sixth Amendment requires.”

Missouri v. Frye, 132 S.Ct. 1399 (2012) See also, Lafler v. Cooper , 132 S.Ct. 1376 (2012): right to effective assistance of counsel at plea

- ii. Significant collateral consequences flow from criminal convictions:
<http://www.abacollateralconsequences.org/>
- iii. Padilla v. Kentucky, 559 US 356—“the negotiation of a plea bargain is a critical stage of the criminal proceedings”
- iv. The ABA Standards for Criminal Justice, Pleas of Guilty are “important guides” as to the obligations of counsel in plea negotiations (Frye)
 - 1. ABA Standards for Pleas of Guilty 14-1.3, Aid of Counsel; Time for Deliberation: “(a) A defendant should not be called upon to plead until an opportunity to retain counsel has been afforded or, if eligible . . . until counsel is appointed or waived. A defendant with counsel should not be required to enter a plea if counsel makes a reasonable request for additional time to represent the defendant’s interests.”
 - 2. (b) “When a defendant has properly waived counsel and tenders a plea of guilty or nolo contendere, the court should not accept the plea unless it is reaffirmed by the defendant after a reasonable time for deliberation, set by rule or statute, after the defendant received the advice from the court required in Standard 14-1 .4.”
 - 3. Section 14-3.2: Responsibilities of defense counsel: (a) Aid the defendant in reaching a decision. “Defense counsel should not recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed.

c. Caseloads: **RULE 1.3 DILIGENCE:** “A lawyer’s work load should be controlled so that each matter can be handled adequately.”

i. 1973 ABA Standards for caseloads in criminal cases:

150 felonies OR
400 misdemeanors OR
200 juveniles OR
25 appeals

ii. Modern case complexity supports even lower caseloads:

1. Increased prevalence of mental health issues being addressed in the criminal justice system
2. Increasing use of forensic evidence
3. Increasing volume of information /potential information from dashboard cameras, body worn cameras and routine surveillance videos in businesses
4. Cell phone and computer data
5. Collateral consequences and immigration consequences

iii. Recent Texas Delphi Study proposes caseloads of:

1. 236 misdemeanors carrying up to 6m in jail OR
2. 175 misdemeanors carrying up to 12m in jail OR
3. 175 Felonies carrying up to 2 years in prison OR
4. 144 Felonies carrying up to 10 years in prison, OR
5. 105 Felonies carrying up to 20 years in prison; OR
6. 77 Felonies carrying up to Life

c. **COMPETING ROLES OF A CRIMINAL DEFENSE ATTORNEY:**
obligations to individual clients, obligations for systemic change

i. Preamble to Code of Ethics: “In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from **conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living.** The

Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these Rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation to zealously protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system."

ii. Current Clients and Future Clients:

1. FUTURE CLIENTS:

- a. Ethical obligations require zealous advocacy for the current client to control our actions. Treat each client in a vacuum without consideration of the impact of actions on other clients
- b. The practical reality is there is always a "future" client in both the literal and theoretical sense
- c. Actions to improve the criminal justice system serve to assist our future clients

2. RULE 1.7: CONFLICT OF INTEREST:

- a. Shall not represent a client if the representation will be directly adverse to another client (unless each has given a waiver)
- b. Shall not represent a client if the representation may be materially limited by the lawyer's responsibility to another client/3rd person or the lawyer's own interest (without a valid waiver)
- c. Comment: loyalty is an essential element in the attorney-client relationship.
- d. Loyalty is impaired when a lawyer cannot consider, recommend or carryout a course of action for the client because of his or her other responsibilities or interests.

3. RULE 1.9: CONFLICT OF INTEREST: FORMER CLIENT: A lawyer who has formerly represented a client in a matter shall not thereafter: (b) use information relating to the representation **to the disadvantage of the former client** except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

iii. Current Clients and Systemic Change:

1. For most attorneys the opportunity to raise systemic flaws comes via challenges made in individual cases (vs. systemic impact

litigation) but pressing these challenges in individual cases may not always be what the client wants or may be at the expense of leveraging the systemic problem to press for a more favorable outcome for the individual client.

2. Lawyers must consider their roles of ADVISOR and COUNSELOR to the individual client:

- a. Mississippi Rule of Professional Responsibility 2.1:
Advisor: “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”
- b. Mississippi Rule of Professional Responsibility 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer: “a lawyer shall abide by a client’s decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.”

3. Opportunities for systemic changes:

- a. Pre-trial litigation for Brady Evidence: the ability to identify potential Brady information to mitigate guilt or punishment often is apparent early in a case and can be pursued early in the representation.
 - i. Ex: Co-Defendant cases—information about the co-defendant’s prior history, statements he has made, etc can help establish your client’s lesser role in an offense which can be used, at a minimum, to mitigate sentencing
 - ii. Ex: Snitch cases—information identifying the snitch, his/her prior criminal history, the nature of the cooperation/benefits he/she is receiving, etc can establish bias, motive to fabricate or mitigate punishment (i.e. the snitch pushed for larger quantities of drugs/increased frequency of sales because the bigger the case against your client, the better outcome for the snitch—corroborates client’s

version that he/she would not have acted/acted to the same extent but for the snitch's encouragement)

- b. Pre-trial Bail Advocacy: can raise issues about disparities within the system for minorities and the poor

iv. Systemic Changes:

1. The use of Evidence Based Decision Making information to change the dynamic of a systemic flaws from individual judges, prosecutors, police, etc. to data driven, non-judgmental facts
2. Use of model systems: ABA 10 Principles of an Indigent Defense Delivery System
 - a. ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM:
 - i. #1: The public defense function, including the selection, funding, and payment of defense counsel is independent.
 - ii. The public defense function should be “independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.”
 - iii. “Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.”
3. Small changes that can have a big difference:
 - a. Change the language in the court room through motions and your own conscious word-choices:
 - i. “The Victim” vs. “The complaining witness”
 - ii. “The Defendant” vs. “The Accused”
 - iii. “My Client” vs. “Mr. Jones”
 - b. Change the tenor of the proceedings:
 - i. Inclusiveness of accused by your actions—treat him/her as a colleague rather than an object
 - ii. Stand for the client as you would for a judge or jury
 - iii. Talk with clients and to clients rather than at them and about them.
 - iv. Use of Mirroring and Looping
 1. Mirroring body language is a non-verbal way to say ‘I am like you, I feel the same’.

2. Mirroring can be of facial expressions or body posture/body language
3. Looping of words, phrases helps both parties to a communication feel listened to and develops a measure of commonality
4. Opportunities for raising systemic problems and asserting fundamental values:
 - a. Bail Advocacy
 - i. US v. Salerno, 481 US 739 (1987) “ In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”
 - ii. Data makes clear cash bonds do not increase the rate of court appearances or compliance
 1. **www.texasappleseed.org/sites/default/files/Bail%20Reform%20Summary.pdf**
 2. **www.pretrial.org/.../Unsecured+Bonds,+**
 - iii. The role of the presumption of innocence
 - iv. Re-entry data relating to the value of employment and community ties on decreasing recidivism
 - v. Role of data: the Pretrial Justice Institute
<http://www.pretrial.org>
 - b. Sentencing: No one should be defined by what they did on their worst day.
 - i. Systemic failure of prior counsel who was overworked/too many cases prevented full investigation, adequate time with client, etc resulting in both the attorney pushing for resolutions and the client being left to believe that they will not get much justice from the system and they should minimize their losses. The result is a record littered with minor convictions for cases which the accused may be not guilty of
 - ii. Substantial systemic overhaul in Mississippi is a bell-weather for change: 2012 Mississippi had 2nd highest per capita incarceration rate in US (and therefore the world). By 2015 it dropped to 11th because of undertaking substantial systemic reform focusing on:
 1. Reallocation of resources from the expensive options like incarceration into community based programs
 2. EBDM shows minimal effects of prolonged incarceration

- iii. Focus on collateral consequences as long term/daily reminders of the price to be paid for his/her mistakes

c. Probation violations: poverty is not a crime:

“A willful refusal to pay [fines] can result in probation revocation and imprisonment, but a failure to pay after ‘sufficient bona fide efforts . . .’ would require the court to consider alternative measures of punishment.” *Berdin v. State*, 648 So. 2d 73, 78 (Miss. 1994) (overruled on other grounds) (quoting *Bearden v. Georgia*, 461 U.S. 660, 672 (1983)). “[A]n indigent may not be incarcerated because he is financially unable to comply with an otherwise lawfully imposed sentence of a fine.” *Cassibry v. State*, 453 So. 2d 1298, 1299 (Miss. 1984) (citing *Bearden*, 461 U.S. at 672).

The US Sct had made clear we cannot incarcerate for non-payment of fines when it is due to poverty. A natural extension of that is to not incarcerate someone for any PVs that are due to poverty—failure to attend treatment programs (whether b/c don’t have the \$\$ to pay the cost of the program or to get transportation to get there)

Allows the conversation to be refocused on both the systemic shortcomings of not having sufficient resources in the community and the client’s “bona fide efforts” to seek employment, attend treatment, etc as *Bearden* required evidence of his “bona fide effort” to do so.

Using data: According to the Pew Charitable Trust, more individuals were entering Mississippi’s prisons for PVs than for new convictions and most PVs were based on technical violations. This should support the appointment of counsel for probation violations as having an advocate helps assure information gets to the court to make an informed, unbiased decision.

d. Discovery/Brady:

i. The PV argument:

1. Prosecutors are granted the responsibility of regulating the flow of information.
2. Court Orders must be enforced to ensure the respect for such orders and to ensure others obey the court’s orders

3. Respect for the court comes from holding both sides to the same standard==for an accused to respect the rulings of a court, the court must demonstrate through its actions that it holds all who violate its orders equally accountable
4. Failure to comply with a court order merits punishment in an effort to reform/change behavior
5. The imposition of punishment can have an impact on others (for the accused, upon his family; for prosecutors upon the community) who did not engage in the improper action but who are nonetheless punished as a result.

ii. The “Breach of Trust” argument:

1. Prosecutors are placed in a special position of trust within the court system.
2. The accused must rely upon the prosecutor and his/her representations to know if there is exculpatory information
3. The accused must trust the prosecutor when he/she indicates that certain information does not exist
4. When one violates the trust placed upon him/her the consequences of such a breach must be substantial
5. When one person entrusts another with something valuable to them whether that be their money, their children, their business or their home—they should expect it to be protected and when that trust is violated it is especially painful
6. An accused entrusts in the prosecution his most valuable things—his freedom, his future, his good name and his family. When a prosecutor betrays that trust the punishment must be significant.

iii. The Court is the minister of justice: it is the court’s responsibility to assure there is justice being done. Justice does not come from merely the outcome of a case, but from the way in which that outcome is reached.

Fundamental fairness requires each side be held to AT LEAST the same standards, and arguably,

prosecutors should be held to higher standards because of their unique role in the CJS.

- e. Difficult Clients and Difficult Cases: the best vehicles for advocating for fundamental, systemic change
 - f. Review Dockets:
 - i. Holding monthly reviews in certain cases can increase compliance, minimize procrastination, and allow for early intervention when issues arise;
 - ii. Holding monthly reviews allows courts to see positive changes, hear about accomplishments and re-shape the subconscious biases a judge may have in regards to those placed under supervision;
 - iii. Should be limited to high risk offender populations—over supervision of low risk offenders actually can *increase* non-compliance
 - 1. American Probation and Parole Association data: in 2004 60% of probationers successfully complete their supervised probation (nationally)
 - 2. Beginning in 2004 the majority of individuals under probation supervision were being supervised for misdemeanor convictions (50%) than for felonies (49%)
 - 3. According to the APPA, “research would suggest that low risk offenders are not going to benefit from a lengthy term of probation. In fact, low risk offenders **are more likely to recidivate with too much correctional intervention than no intervention.**” APPA FAQs (www.appa-nte.org)
5. Fighting the Judge or Prosecutor on a present client at the expense of a future client:
- a. Ethical obligation is to advocate (in a professional manner) zealously on behalf of your client;
 - b. The perceived power of prosecutors and judges
 - i. The Courts need you to operate
 - ii. The prosecutors need you to operate

- iii. Empower the judges to share in the responsibility for fairness, due process, and zealous advocacy
- iv. Separate unpreparedness from zealousness:
 - 1. Be respectful of the court's time while at the same time being a zealous advocate for your client's needs;
 - 2. Be prepared and be precise as to the issue at hand;
 - 3. Provide documents, data, memos, etc to educate the court on your key issues and provide the court enough time to consider them before ruling.
- v. Future clients need systemic change as much as they need a continuance or a good plea offer.

III. COMBATTING SYSTEMIC HOPELESSNESS:

- a. Feeling beaten by the system: you are in good company. Case study: Strickland v. Washington
 - i. Facts: over 10 days Washington planned and committed 3 groups of crimes including 3 brutal stabbing murders, torture, kidnapping, attempted murder and extortion and theft. After his 2 accomplices are arrested Washington surrenders to police and gives a lengthy and detailed confession to one of the murders.
 - ii. Indicted for his crimes, Washington is appointed an experienced criminal defense lawyer
 - iii. Counsel begins by filing numerous motions, but "experiences a sense of hopelessness about the case" when the client, against counsel's advice, confesses to the other 2 murders.
 - iv. Counsel begins, but does not follow through with investigations into Washington's background. He does not pursue any mental health evaluations as the client has no history of mental illness and has indicated no mental health issues.
 - v. Washington is sentenced to death.
 - vi. "Counsel decided not to present, and hence not to look further for, evidence concerning respondent's character and emotional state. That decision reflected trial counsel's sense of hopelessness about overcoming the evidentiary effect of respondent's confessions to the gruesome crimes."
- b. Speaking up and speaking out about that which is "unfair"

- c. Forming working groups, collations, etc. centered on criminal justice systemic reform issues that include all key stakeholders including judiciary, prosecution, law enforcement, and court personnel;
- d. If you see something; Say something.
- e. Focus on changes for the current client and allow that to become the impetus for changes for future clients.